DUNCAN MILLER

IBLA 70-130 Decided April 2, 1973

Appeal from Bureau of Land Management's Office of Appeals and Hearings, affirming the rejection of an oil and gas lease offer (NM 10152) because the fifth copy of the offer form was not signed.

Affirmed.

Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Applications: Filing -- Oil and Gas Leases: First Qualified Applicant

> An oil and gas lease offer is properly rejected where the fifth copy of the offer form bears the typewritten name of the offeror but does not bear the handwritten signature, as do the other four copies. The applicable regulation, 43 CFR 3111.1-1(a), requires that each form or copy be signed.

APPEARANCES: Duncan Miller, pro se.

OPINION BY MR. FISHMAN

Duncan Miller has appealed from a decision of the Bureau of Land Management's Office of Appeals and Hearings, dated February 27, 1970, which affirmed a New Mexico Land Office decision of October 29, 1969, which rejected oil and gas lease offer NM 10152 on the basis that the fifth copy of the lease offer form was not signed. 1/

In affirming, the Bureau stated:

> As noted by the land office, the regulations provide that five copies of an oil and gas lease offer must

1/ The Land Office decision also rejected the offer as to certain lands which were patented without reservation of minerals to the United States. However, Mr. Miller did not appeal this holding to the Director, Bureau of Land Management.

> be furnished, and that each must be signed in ink. Examination of the lease offer, as filed, verifies the land office finding that the original and three carbon copies of the offer were signed by the offeror, and that the fifth carbon copy of the offer is unsigned. Accordingly, since less than the required number of copies of the lease offer were filed, the offer was properly rejected. 43 CFR 3123.3(b). 2/

Appellant contends the Bureau has not responded to his argument below that the failure to sign one of the copies of a lease offer form should not be a valid reason for rejection of his offer.

Appellant filed five copies of the lease offer, an original and four carbon copies. All copies bear his typed name below the space for signature. The original and three of the carbons bear an original handwritten signature in ink. The fourth carbon, which is an exact copy, has no handwritten signature.

The pertinent regulation at 43 CFR 3111.1-1(a) reads:

> § 3111.1-1 Public domain.
>
> (a) Application-(1) Forms. Except as provided in subpart 3112, to obtain a noncompetitive lease an offer to accept such lease must be made on a form approved by the Director, "Offer to lease and lease for oil and gas," or on unofficial copies of that form in current use: Provided, That the copies are exact reproductions of one page or both sides of the official approved one page form and are without additions, omissions or other changes or advertising. The official form or a valid reproduction of the official form will also constitute the lease when signed by the Manager of the Land Office. Each offer must be filled in by typewriter or printed plainly in ink and signed in ink by the offeror or the offeror's duly authorized attorney-in-fact or agent. Five copies of the official form, or valid reproduction thereof, for each offer to lease shall be filed in the proper land office (see § 3000.5 of this chapter). For the purpose of this part an offer will be considered filed when it is received in the proper office during business hours. [Last emphasis supplied.]

2/ Since recodified as 43 CFR 3111.1-1(a).

Although the quoted regulation is not crystal clear, particularly in the light of 43 CFR 3110.1-7, 3/ the underscored language of the quoted regulation strongly indicates that any one of the original or four copies thereof, when executed by the Bureau will constitute the lease.

We recognize that the Board has held that regulations should be so clear that there is no basis for an oil and gas applicant's noncompliance with them before they are interpreted so as to deprive him of a statutory preference right to a lease. Louis Alford, Prescott A. Sherman, 4 IBLA 277 (1972).

In Mary Adele Monson, 71 I.D. 269, 271 (1964), the Department stated:

> The Department's regulations provide only that the offer must be signed in ink by the offeror. * In the absence of a specific regulation to the contrary, there is no basis for departing from the generally accepted standard as to what consitutes a signature. * * *
>
> It does not necessarily follow, however, that copies of a lease offer in which some copies of the lease form bear one signature and some bear another are acceptable as "copies" under the Department's regulations.
>
> Some courts have held that the word "copy" implies that the instrument so labeled is identical with another instrument. In re Janes' Estate, 116 P. 2d 438, 441 (Calf. 1941); Blatz v. Travelers Ins. Co., 68 N.Y.S. 801, 806 (1947). While the Department has not adapted

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3/ This section reads:

"§ 3110.1-7 Land description.

"(a) Variation in land description. If there is any variation in the land descriptions among the five copies of the official forms, the copy showing the date and time of receipt in the land office will control."

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* In construing that requirement, the Department has held that the regulation does not require that each of the five required copies be individually signed in ink, but it is sufficient if only one copy was directly signed in ink and the signature was impressed on the other four copies through the use of carbon paper. Duncan Miller, Robert A. Priester, A-28621 etc. (May 10, 1961).

> such a rigid interpretation of the word "copy" and has permitted some minor deviations in the copies of oil and gas lease offers and has held that a document may qualify as a copy of a lease offer even though partially illegible (see A. M. Culver, John F. Partridge, Jr., and Duncan Miller, 70 I.D. 484 (1963)), it would seem that a document varying from another in such a substantial matter as the signature cannot be termed a "copy."

See Duncan Miller, 7 IBLA 169 (1972). It follows that the fifth purported "copy" cannot be deemed to be such within the ambit of the regulations.

It is axiomatic that a lease must be signed by both parties. This brings to the fore the question whether the typewritten name of the appellant constitutes a signature in the case at bar where the original and three copies were actually signed.

A typewritten name may constitute a signature, if made with that intent. Mary I. Arata, 4 IBLA 201, 78 I.D. 397 (1971). However, in view of the variation between the signature on the original and three copies on one hand, and the inscription on the fourth copy on the other, it seems clear that the latter "copy" cannot be construed as embodying a signature of appellant. See Mary Adele Monson, supra; Senemex, Inc., A-29271 (March 15, 1963). It seems obvious the failure to sign the last copy of the offer was an inadvertence. However, this factor affords no basis for relief.

Appellant urges that the deficiency did not warrant rejection of his application. However, 43 CFR 3111.1-1(e) spells out curable defects. The failure to sign all the required copies of the offer is not included. The maxim, inclusio unius alterius exclusio est governs here. In other words, all failures to comply with the regulations, save those listed in 43 CFR 3111.1-1(e) are fatal to an oil and gas offer. Celia R. Kammerman, et al., 66 I.D. 255, 263 (1959).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Frederick Fishman, Member

We concur:

Edward W. Stuebing, Member,

Martin Ritvo, Member

Joan B. Thompson, Member

Douglas E. Henriques, Member.

We dissent:

Anne Poindexter Lewis, Member

Newton Frishberg, Chairman

Joseph W. Goss, Member

Anne P. Lewis, dissenting:

For the reasons stated below, I disagree with the rationale and conclusion of the majority to the effect that oil and gas lease offer serial no. NM 10152 is properly rejected on the ground that the fifth copy of the offer to lease form was not signed in handwriting by the offeror.

As is stated in the majority opinion, the appellant filed one lease offer on the proper lease form, with one original and four carbon imprinted copies. His name was typed on the original and was carbon imprinted on the four copies, and he affixed his signature in handwriting individually to the original and three of the copies but not to the fourth one.

The regulation at 43 CFR 3111.1-1(a), quoted in the majority opinion, requires that each offer must be signed by the offeror and that five copies of each offer to lease shall be filed.

Thus the regulation does not specify that each copy shall be signed. Although this regulation may have been construed many times to mean each copy must be signed, the indisputable fact remains that the regulation does not so specify. In this respect the regulation is ambiguous and the ambiguity should be resolved in favor of the appellant.

On the basis of Mary Adele Monson, 71 I.D. 269 (1964), and Senemex, Inc., A-29271 (March 5, 1963), the majority appears to conclude that the fourth carbon imprinted lease form here in issue, without a handwritten signature on it, is not a "copy." First, it is clear that an exact copy is either one made simultaneously by carbon imprint when the original was prepared, or is one made by a photographic copying machine. In the instant case, each signature is different and obviously was individually placed on each of the three signed copies. Thus, technically speaking, not one of the carbon copies with the signature is an exact copy but the majority accepts them as sufficient. The majority, then, determines what constitutes a copy on the basis of a degree of but not absolute exactness. And I view the fourth copy herein in the same way. It is a sufficient copy to meet the requirements of the regulation at 43 CFR 3111.1-1(a). In standard business practice, for example, business files are full of copies, made by carbon imprint when the original was typed, which do not bear the handwritten signature which was on the original. The fourth carbon lease form herein is an exact copy except for the lack of a signature.

Finally, the majority stresses that the fifth lease form copy must bear the signatures of the offeror in order to constitute the lease when the manager of the land office signs it. The regulation at 43 CFR 3111.1-1(a), quoted in the majority, with regard to the offer constituting the lease specifies only:

> The official form or a valid reproduction of the official form will also constitute the lease when signed by the Manager of the Land Office.

This regulation clearly does not say that every one of the copies filed must be able to constitute the lease. It says instead that the official form or a valid reproduction of it will constitute the lease when signed by the manager of the land office. Accordingly, it is my view that the signed original and the three signed copies in the instant case are more than adequate under the regulation to constitute a lease when signed by the land office manager.

On the other side of the coin, I seriously doubt that the appellant could successfully refuse to be bound by the lease, if he so wished, solely because he failed to add his handwritten signature to an otherwise exact carbon imprinted copy of his original lease offer form, when he signed in handwriting the original and three copies.

In sum, I would find the appellant's lease offer valid and would reverse the decision below for two reasons: (1) the applicable regulation does not specifically require that each copy of a lease offer form be signed in the offeror's handwriting; and (2) in the absence of such a specific requirement, a carbon imprinted copy of the original, exact in all ways except that the offeror's signature as a separate act from the preparation of the original has not been placed on it, is a sufficient copy within the requirements of the applicable regulation.